



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0764]

RIN 1625-AA00

Safety Zone; Port Huron Float-Down, St. Clair River, Port
Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the St. Clair River in the vicinity of Port Huron, MI. This zone is intended to restrict and control movement of vessels in a portion of the St. Clair River. Though this is an unsanctioned, non-permitted marine event, this zone is necessary to provide for the safety of life on the navigable waters near Port Huron, MI, during a float down event.

DATES: This temporary final rule is effective from 12 p.m. through 8 p.m. August 20, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0764 in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9564, or e-mail Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

During the afternoon of August 20, 2017, a non-sanctioned public event is scheduled to take place. The event is advertised over various social-media sites, in which a large number of persons float down a segment of the St. Clair River, using inner tubes and other similar floatation devices. The 2017 Float-Down event will occur between approximately 12 p.m. and 8 p.m. on August 20, 2017. This event has taken place in the month of August annually since 2009.

No private or municipal entity requested a marine event permit from the Coast Guard for this event, and it

has not received state or federal permits since its inception. The event has drawn over 3,000 participants of various ages annually. Despite plans put together by federal, state and local officials, emergency responders and law enforcement officials have been overburdened pursuing safety during this event. Medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line are some of the numerous difficulties encountered during the Float-Down event.

During the 2014 Float-Down event, a 19-year-old participant died. During the 2016 float down, a wind shift caused thousands of U.S. citizen rafters with no passports to drift into Canadian waters. The current and wind made it impossible for the rafters to paddle back into U.S. waters, causing significant coordination with the Canadian authorities. Despite these events, promotional information for the event continues to be published. More than 3,000 people are again anticipated to float down the river this year. No public or private organization holds themselves responsible as the event sponsor. Therefore, the Coast Guard does not receive full and final details regarding the event or the number of participants until the time of the

event.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this float down event until there was insufficient time remaining before the event to publish an NPRM.

We are issuing this rule, and under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's

authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Detroit (COTP) determined the float down poses significant risk to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to Float-Down participants and spectators. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 p.m. to 8 p.m. on August 20, 2017. The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416'N; 082°25.333'W, extending east to the international boundary to a point at position 43°00.416'N; 082°25.033'W, following south along the international boundary to a point at position 42°54.500'N; 082°27.683'W, extending west to a point on land just north of Stag Island at position 42°54.500'N; 082°27.966'W, and following north

along the U.S. shoreline to the point of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative. Vessel operators must contact the COTP or his on-scene representative to obtain permission to transit through this safety zone.

Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard-approved Personal Floatation Device (PFD). The COTP or his on-scene representative may be contacted via VHF Channel 16.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

We conclude that this rule is not a significant regulatory action. This regulatory action determination is based on the size, location, duration, and time-of-year of

the safety zone. Vessel traffic will not be able to safely transit around this safety zone which will impact a designated area of the St. Clair River from 12 p.m. thru 8 p.m. on August 20, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone so vessel owners and operators can plan accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting eight hours on August 20, 2017 that will prohibit entry within the 7 mile portion of St. Clair River. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0764 to read as follows:

§ 165.T09-0764 Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI.

(a) Location. The following area is a temporary safety zone: all U.S. navigable waters of southern Lake Huron and the St. Clair River adjacent to Port Huron, MI, beginning at Lighthouse Beach and encompassing all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00.416'N; 082°25.333'W, extending east to the international boundary to a point at position 43°00.416'N; 082°25.033'W, following south along the international boundary to a point at position 42°54.500'N; 082°27.683'W, extending west to a point on land just north of Stag Island at position 42°54.500'N; 082°27.966'W, and following north along the U.S. shoreline to the point of origin (NAD 83).

(b) Enforcement period. The regulated area described in paragraph (a) will be enforced from 12 p.m. through 8 p.m. on August 20, 2017.

(c) Regulations. (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

DATED: August 10, 2017

Jeffrey W. Novak
Captain, U. S. Coast Guard
Captain of the Port Detroit
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